IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

WP(C).No. 48 of 2007(E)

PETITIONERS:

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1. T.K.MATHACHAN, S/O.KURIAN,
   THENGUMTHOTTATHIL HOUSE, BOARD MEMBER,
   PALLIVASAL KSHEEROLPADAKA CO-OPERATIVE SOCIETY
   LTD.NO.157 (D), KALLAR, VATTAYAR P.O.,
   ADIMALI.

2. M.M.RAHIM, S/O.MUHAMMED,
   MURIKKATTIL HOUSE, BOARD MEMBER,
   PALLIVASAL KSHEEROLPADAKA CO-OPERATIVE SOCIETY
   LTD.NO.157 (D), KALLAR, VATTAYAR P.O.,
   ADIMALI.

3. N.V.RAIJU, S/O.VARKEY,
   NEDUMGATTU HOUSE, BOARD MEMBER,
   PALLIVASAL KSHEEROLPADAKA CO-OPERATIVE SOCIETY
   LTD.NO.157 (D), KALLAR, VATTAYAR P.O.,
   ADIMALI.

4. M.N.GOPI, MOONNUKANDATHIL HOUSE,
   KOOMBANPARA P.O., IDUKKI DISTRICT.

5. P.V.JOY, PUTHENPURAYIL HOUSE,
   KURISUPARA, VATTAYAR, IDUKKI DISTRICT.

6. T.M.JOY, THENGUMPALLIL HOUSE,
   CHITHIRAPURAM P.O., ANACHAL, IDUKKI DISTRICT.

7. C.K.BAIJU, CHELAKEKUDIYIL HOUSE,
   THOKKUPARA, AMBAZHACHAL, IDUKKI DISTRICT.

8. N.A.CHACKO, NELLIKUNNEL HOUSE,
   IRUTTUKANAM, ANAVIRATTY P.O., IDUKKI DISTRICT.

BY ADV. SRI.P.P.JACOB
SRI.N.T.SATHYAVAN

RESPONDENTS:
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1. THE DAIRY EXTENSION OFFICER,
ADIMALI, IDUKKI DISTRICT.

2. THE DEPUTY DIRECTOR,
DAIRY DEVELOPMENT DEPARTMENT,
THODUPUZHA POST, IDUKKI DISTRICT.

3. PALLIVASAL KSHEEROLPADAKA CO-OPERATIVE
SOCIETY LTD.NO.157(D), KALLAR,
VATTAYAR P.O., ADIMALI, REP. BY ITS ADMINISTRATOR.

4. STATE OF KERALA,
REP. BY ITS SECRETARY,
AGRICULTURE DAIRY DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

R3 BY ADV. SRI.P.K.VIJAYAMOHANAN
R1, R2 & R4 BY GOVERNMENT PLEADER SMT.LATHA THANKAPPAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON

16/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.48 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of bye-law pages 1 & 4.

Ext.P2: Copy of the notice issued by R1 to the petitioner dtd.3.8.2006.

Ext.P3: Copy of the reply submitted by first petitioner before the first respondent dtd.10.8.2006.

Ext.P4: Copy of the reply submitted by 2nd petitioner before R1 dtd.10.8.2006.

Ext.P5: Copy of the reply submitted by 3rd petitioner before R1dtd.5.8.2006.

Ext.P6: Copy of the notice issued by R2 to the petitioners dtd.13.9.2006.

Ext.P7: Copy of the explanation submitted by the first petitioner before R2 dtd.20.9.2006.

Ext.P8: Copy of the explanation submitted by the second petitioner before R2 dtd.20.9.2006.

Ext.P9: Copy of the explanation filed by the third petitioner before the 2nd respondent dtd.20.9.2006.

Ext.P10: Copy of the order in R.P.839/2006 in W.P.(C) No.25026/2006 dtd.28.9.2006.

Ext.P11: Copy of the agreement executed by Mathai in favour of first petitioner dtd.24.9.2002.

Ext.P12: Copy of the agreement executed in favour of the 2nd petitioner dtd.11.10.2002.

Ext.P13: Copy of the agreement executed by Cherian in favour of 3rd petitioner dtd.12.5.98.
Ext.P14: Copy of the judgment in O.P.No.835/97 dtd.15.1.97.
Ext.P15: Copy of the order issued by 2nd respondent to the petitioners dtd. 17.11.2006.
Ext.P16: Copy of judgment in W.P.(C) No.31483/2006 dtd.28.11.2006.

Ext.P17: Copy of the paper notification in Mangalam daily dtd.8.12.2006.

Ext.P18: Copy of the notice issued by the 2nd respondent to one of the committee members by name Gopi dtd.16.12.2006.

Ext.P19: Copy of the explanation submitted by the 4th petitioner before the 2nd respondent dtd.29.12.2006.

Ext.P20: Copy of the order issued by the 2nd respondent disqualifying the 4th petitioner dated 29.12.2006.

Ext.P21: Copy of the order issued by the 2nd respondent removing the petitioners from the committee of the third respondent dtd.30.12.2006.

Ext.P22: Copy of the order vide No.G.O.(Rt) 1885/2006/AD dtd.29.12.2006.

Ex.P23: Copy of the report dtd.31.8.2006.
Second Respondents' Exhibits:
Ext.R2(a): Copy of Govt.Order dtd.29.12.2006.

Ext.R2(b): Copy of the complaint dtd.29.11.2006.

Ext.R2(c): Copy of letter dtd.13.12.2006.

-TRUE COPY-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 48 OF 2007

Dated this the 16th day of March, 2007

J U D G M E N T

Petitioners are elected committee members of the third respondent- Society. They are aggrieved by Exts.P15, P20, P21 and P22 orders in this writ petition. Exts.P15 and P20 are orders passed by the second respondent by which petitioners 1 to 4 have been disqualified from continuing as members of the third respondent- Society. Ext.P21 is the order passed by the second respondent under Section 33 of the Kerala Co-operative Societies Act (hereinafter referred to as 'the Act') appointing a Part Time Administrator for the society on the ground that on account of the disqualification of petitioners 1 to 4, the Managing Committee of the society has lost quorum and therefore, in order to avoid administrative stalemate in the society, it is necessary to appoint an Administrator to take charge of the administration of the society. Ext.P22 is the appellate order passed by the

Government by which the appeal filed by petitioners 1 to 3 against Ext.P15 order has been rejected.

2. Petitioners 1 to 3 were disqualified on the ground that they are neither residing nor possessing property within the area of operation of the third respondent-Society and therefore, going by the bye-laws of the society, they are not entitled to continue as members of the society. The fourth petitioner is disqualified on the ground that he is a defaulter in repayment of loan amounts to the society and he has not paid the arrears due from him to the society as provided under Rule 44(1)(c) of the Kerala Co-operative Societies Rules (hereinafter referred to as 'the Rules').

3. It is admitted before me by all parties to this writ petition that it is on account of the disqualification of these four persons that the order under Section 33 of the Act (Ext.P21) has been passed and if disqualification of any one of them is set aside, then the Managing committee would have quorum which would render Ext.P21 unsustainable. The contention of the petitioners is that as regards

petitioners 1 to 3, although they are actually in possession of the properties within the area of operation of the third respondent-Society, in view of the dispute between the Government and those petitioners regarding the title to the property, they are unable to get any evidence from the revenue authorities in proof of their possession/ownership of the property. It is in the above said circumstances that they have approached this Court by filing writ petitions which resulted in Exts.P10, P14 and P16 judgments which according to them, would show that they were permitted to produce oral and other documentary evidence to prove their possession of the property. They would submit that they have produced Exts.P11 to P13 agreements and have also given oral evidence in proof of those documents which according to them, are sufficient to prove their possession of the property within the area of operation of the third respondent-Society. Regarding the fourth petitioner, the contention of the petitioners is that the fourth petitioner does not owe any money to the society and even if he does

owe any money, he can be declared as a defaulter and disqualified under Rule 44(1)(c) of the Rules only if the condition in the last proviso to Section 44(2) which requires that a disqualification under sub-clause(1) of clause (c) of sub-rule(1) of rule 44 shall be deemed to be accrued only after the expiry of a period of one month from the date of receipt, by the member concerned, of a notice from the society demanding him to clear off the defaulted amount specified therein and he fails to remit or cause to remit the amount within the said period. The submission is that the fourth petitioner never received any notice as contemplated under the said proviso and the impugned order in respect of the fourth petitioner does not disclose any material on the basis of which the second respondent has come to the conclusion that such a notice was in fact issued to the fourth petitioner. Therefore, according to the petitioners, Ext.P20 order disqualifying the fourth petitioner is totally unsustainable, the petitioners submit.

4. Counter affidavits have been filed by the second and third respondents. However, the counter affidavit on behalf of the third respondent is filed by the present Administrator who is not in possession of any material regarding the issues involved in this writ petition. As such, I have to decide this issue on the basis of the contentions of the second respondent and the counter affidavit filed by him. According to the second respondent, petitioners 1 to 3 have not produced any proof which would show that they are in possession of any property within the area of operation of the third respondent-Society. With regard to the fourth petitioner, the second respondent would contend that notice had in fact been issued to the fourth petitioner as required under the last proviso to Rule 44(2) of the Rules and therefore, there is no merit in the contentions of the fourth petitioner also. It is further submitted that since petitioners 1 to 4 have been disqualified, the second respondent was perfectly justified in issuing Ext.P21 order under Section 33 of the Act appointing an Administrator to run the society.

5. I have considered the rival contentions in detail.

6. As I have already stated above, if I hold that any one of the first four petitioners are held to be not liable to be disqualified, then naturally Ext.P21 would become invalid. I shall now examine whether Exts.P15, P20 and P22 orders disqualifying petitioners 1 to 4 are valid or not. Admittedly, petitioners 1 to 3 are not in possession of any statutory documents which would prove that they are in possession of any property within the area of operation of the third respondent-Society. Their only contention is that in view of the dispute with the Government regarding the title to the properties in question, they are unable to produce any certificate from the revenue authorities proving possession of their properties and because of that, this Court had by judgments produced by them allowed the petitioners 1 to 3 to prove their case by producing other oral and documentary evidences. Of course, if they can, the petitioners 1 to 3 can certainly prove their possession by adequate materials acceptable under law to prove that they are in possession of

any property within the area of operation of the third respondent-Society. But, admittedly, what they could produce are only Exts.P11 to P13 agreements. Exts.P11, P12 and P13 are dated 24.9.2002 and 11.10.2002 and 12.5.1998 respectively. These are agreements between two private individuals. Petitioners 1 to 3 have not cared to examine the author of those documents to prove the same. Apart from the same, the only other evidence available before the second respondent is the interested statements of petitioners 1 to 3 themselves. I am not at all satisfied that these evidences would in any way be sufficient to prove possession of properties by petitioners 1 to 3 within the area of operation of the third respondent-Society. That being so, I do not find any merit in the challenge against Exts.P15 and P22 orders.

6. Now comes the question of disqualification of the fourth petitioner- Sri.M.N.Gopi by Ext.P20 order. He has been disqualified under Rule 44(1)(c)(i) of the Rules. This rule is subject to the last proviso to Rule 44(2) of the Rules.

Both the said provisions are extracted hereinbelow:-

> "44. Disqualification of membership of committee.-(1) No member of the society shall be eligible for being elected, or appointed as a member of the committee of the society under S.28 if he:
>
> xxx xxx xxx xxx
>
> (c)(i) is in default to the society or to any other society in respect of any loan or loans taken by him or loan in which he had stood surety, for such period, as is prescribed in the bye-laws of the society concerned or in any case for a period exceeding three months or is a defaulter to the society or to any other society;
>
> xxx xxx xxx xxx
>
> "(2) A member of the committee shall cease to hold his office as such, if he-
>
> xxx xxx xxx xxx
>
> (c) is subsequently seen to be disqualified under sub-r.(1) on the date of election itself.
>
> Provided that the disqualification under sub-clause (1) of clause (c) of sub-r.(1) shall be deemed to be accrued only after the expiry of a period of one month from the date of receipt by the member concerned of a notice from the society

> demanding him to clear off the defaulted amount specified therein and he fails to remit or cause to remit the amount within the said period."

Going by the said provisions, for attracting disqualification under Rule 44(1)(c) of the Rules, it is not merely sufficient that the member is in default in respect of any loan or loans taken by him or loan in which he had stood surety. But, it should also be proved that as provided in the proviso mentioned above, a notice should have been issued to the member from the society demanding him to clear off the defaulted amount specified in the notice and he should have failed to remit or cause to remit the amount within a period of one month from the date of receipt of the said notice. The fourth petitioner has categorically denied having received any such notice, apart from contending that he is not a defaulter at all. In Ext.P20, what is stated is that the fourth petitioner had taken two loans, the period of repayment of which ended on 1.4.2002 and 1.4.2005, as reported by the Secretary of the third respondent-Society.

The further finding therein is that Sri.M.N.Gopi- the fourth petitioner could not prove that he does not have any arrears to be paid to the third respondent-Society. I am not satisfied that this is what is contemplated by Rule 44(1)(c) and the last proviso to Rule 44(2) of the Rules as extracted above. In order to attract the disqualification under Rule 44 (1)(c), it has to be specifically proved that the society had, in fact, issued a notice demanding the fourth petitioner to clear off the defaulted amount within one month from the date of receipt of the notice and he should have failed to remit or caused to remit the amount within the said period. Ext.P20 order is clearly lacking in any details regarding any such notice or non-compliance with such notice. Therefore, I have looked into the counter affidavit filed by the second respondent to see whether the same contains any details regarding the same. What I could find are only paragraphs 11 and 17 of the counter affidavit which read thus:-

> "11. Above notice under Rule 44(2) was stated to be issued by the Bank on 25-10-2005 and accordingly notice No.C.4054/2006 dated 16-12-2006 (Ext.P18) was sent to 4th petitioner as per Rule 44(3) of the Act and to give his objections if any before the 2nd respondent on 29-12-2006.
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> 17. As regards the notice contemplated under the proviso to Rule 44 (2)(a) as per Ext.R2(c) reply of Devicolam Taluk Co-operative Agricultural and Rural Development Bank Ltd.No.I 136, Adimali, it is explicitly stated by the Chief Executive (Secretary) of the bank that notice has been served on the loanee (item 5)- the statement has been tkaen on its face value and it is humbly submitted that an officer dealing with administrative matters of more that 200 milk Co-operative Societies implementing plan and non-plan schemes for dairy farmers etc, it will be practically impossible to verify each and every statement of such statutory bodies individually has to believe the Bank authorities when they state recordically that statutory notice has been sent to the defaulting loanees. Since the quorum of the committee had been lost by Ext.P20 order Part-time Administrator was posted as per Section 33(1) of the Act (Ext.P21)."

It is abundantly clear from the above paragraphs that there was no material before the second respondent except a

statement from the Secretary of the society to come to the conclusion that a notice as contemplated under the last proviso to Rule 44(2) of the Rules was issued by the Bank on 25.10.2005 and that the second respondent had blindly believed the statement of the Secretary of the Society in that regard. I am afraid that that is not the way to decide the question as to whether a member is to be disqualified under Rule 44(1)(c) of the Rules. The second respondent should have, on the basis of materials on record, either produced by the Society or summoned by the second respondent satisfied himself that a notice as provided under last proviso to Rule 44(2) of the Rules had in fact been issued which has been received by the fourth petitioner, and the member had not remitted the amount covered by the notice within the prescribed period. The second respondent had admittedly not done the same.

7. In this connection, I may also notice a Division Bench decision of this Court reported in **Surendran Nair** v. **State of Kerala** (2004(1) KLT 407) wherein after quoting

the above said provisions of Section 44, the Division Bench held as follows:-

> "So to hold that a member of a committee is subsequently seen to be disqualified under sub-r.(1) on the date of election, it should be proved that he was in default for a period of three months. It should also be proved that the society had issued a notice to him demanding repayment of the amount but he failed to repay the amount within a period of one month from the date of receipt of the said notice. Once these conditions are satisfied, the Registrar is bound to hold that an elected member of the committee was disqualified for being elected as a member on the date of election itself."

8. In the above circumstances, I have to necessarily hold that the second respondent has not satisfied me that the conditions necessary for disqualifying the fourth petitioner under Rule 44(1)(c) of the Rules have been satisfied. Therefore, Ext.P20 order has not been passed in accordance with Rule 44(1)(c) of the Rules at all and therefore, the same is liable to be quashed. I do so.

9. I have already mentioned above that it is not disputed before me that if any one of petitioners 1 to 4 is held to be not liable to be disqualified, the conditions precedent for passing an order under Section 33 of the Act would not be satisfied. That being so, now that I have held that the disqualification of the fourth petitioner is bad in law and quashed Ext.P20, Ext.P21 order passed under Section 33 of the Act becomes automatically unsustainable, since on setting aside the disqualification of the fourth petitioner, there would be sufficient quorum for the Managing Committee to function. Therefore, Ext.P21 order is also quashed. There would be a further direction to first and second respondents and the Administrator who is now in charge of the Society to hand over charge of administration of the Society to the Managing Committee within two weeks from the date of receipt of a copy of this judgment.

The writ petition is partly allowed as above.

S. SIRI JAGAN,
Judge

Mbs/

K.THANKAPPAN, J

Crl.Appeal NO. OF 2001

J U D G M E N T

DATED:13-02-2007